



PLANNING SYSTEM

Local planning

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Related	PS 05–005 and PS 06–005

Local environmental studies

This circular explains the processes that are used to identify when a local environmental study is required for an amendment to a local environmental plan. It supports advice provided by the Department on the introduction of new section 117 directions and the strategic approach to the review of proposed local environmental plans through the LEP Review Panel.

Introduction

The NSW Government’s planning reform agenda is focused on improving the way that local planning is done in NSW. In recent months the Minister for Planning has introduced changes to the *Environmental Planning and Assessment Act 1979* (EP&A Act), issued new Ministerial Directions for plan making and established the strategic review of local environmental plans through the LEP Review Panel. With these changes has come a need to clarify the role of local environmental studies in the plan-making process.

This circular provides advice to councils and development proponents on when a local environmental study should be prepared to support an amendment to a local environmental plan. This circular also provides guidance on the supporting information that councils and State Government would expect from a development proponent when asking for changes to the zoning or planning controls of land in order to facilitate new development.

Strategic focus

Part of the movement towards a more strategic approach to plan making is the importance of ensuring that spot rezonings and other changes are thoroughly justified against a strategic context. If a proposal is not identified in a strategic plan, the local environmental study provides the independent review of proposals necessary to justify a change (or not) to the existing planning controls.

As stated in previous planning circulars, the NSW Government is not encouraging an ad hoc approach to the amendment of local environmental plans. However, the NSW Government recognises that the rezoning of land may occur if:

- the land has been identified in an agreed strategy
- the proposal will provide for significant employment generation
- an innovative proposal occurs that meets the strict sustainability criteria laid down in a regional strategy
- a compelling argument can be made for the spot rezoning, or
- the proposal is a minor one involving administrative issues.

As has previously been the case, a local environmental study will provide an objective analysis of the capability and suitability of the land for future development that will ensure that the proposed rezoning is both environmentally sustainable and consistent with relevant metropolitan, regional or local planning strategies. A local environmental study may also be required in order to justify an inconsistency between a draft local environmental plan and a section 117 direction. A number of section 117 directions allow for inconsistencies if a council can provide a strong case via a local environmental study as to why a variation is justified.

Process governing the specification and preparation of a local environmental study

The local environmental plan process, including the role of the LEP Review Panel, is illustrated in Attachment 1. The preparation of a local environmental study is a key step in the preparation of a local environmental plan or amendment under section 57 of the EP&A Act. It ensures that the proposed local environmental plan identifies zonings and uses for an area that are appropriate to its existing and future natural, cultural, economic and built environment.

It is important to note that section 57 of the EP&A Act requires a local environmental study to be prepared to accompany a draft local environmental plan. However, under section 74(2)(b) of the EP&A Act the need for a study may be waived by the Director-General for local environmental plans that amend a principal plan.

Where a local environmental study is prepared section 57(5) of the EP&A Act and clause 15 of the Environmental Planning and Assessment Regulation 2000 (EP&A Regulation) allows a council to recover the costs of the study from the person or persons who have made the request for the rezoning amendment.

Specifying terms of reference for local environmental studies

The decision to proceed with a local environmental plan and accompanying study will come from the Director-General based on a recommendation from the LEP Review Panel. Under clause 9 of the EP&A Regulation, councils are expected to identify in their section 54 notification a view on whether a study is necessary for the intended rezoning and any proposed terms of reference. If written authorisation to proceed is granted by the Director-General, it will also provide advice on the need for a study and the terms of reference.

The need for a local environmental study to be prepared for an amending local environmental plan will likely be identified where the amendment will:

- allow a major residential, tourist/lifestyle, commercial, industrial or rural residential development, whether or not the proposal is in accordance with an agreed strategy
- any proposed rezoning that is inconsistent with section 117 directions, but is otherwise considered to be worthy of further investigation or review
- review matters of high public interest or significance for the future planning of the area
- allow a proposal that will have significant economic development or employment-generating potential to be investigated.

In establishing terms of reference for an environmental study the Director-General (via the LEP Review Panel), will take into consideration the site, the nature of development arising from the proposed land use, the likely environment of the site and any strategic issues or principles that will need to be addressed through the draft plan.

Where the draft plan is to rezone land a local environmental study will need to provide the detailed information about the environment of the land, including:

- the existing natural, social and economic environment
- a review of potential land uses
- an analysis of the environmental, economic and social implications that will arise from a change in the zoning of the land.

In the case of minor rezonings or amendments, the Director-General (via the Panel again), will consider whether the need for a local environmental study should be waived. What constitutes a minor rezoning or amendment will be determined on a case-by-case basis. Determining factors will include the nature of the amendment, consistency with metropolitan, regional or local planning strategies, consistency with section 117 directions, as well as the size, scale and location of any accompanying proposal.

Information to support rezoning applications

The preparation of extensive supporting documentation by development proponents before the Director-General has received advice on the proposed rezoning from the LEP Review Panel runs the risk that the various studies will not be used. Where the proposed rezoning does receive written authorisation to proceed there is a strong likelihood that additional information, studies or independent review will be required by the Director-General on the recommendation of the LEP Review Panel.

It is recognised that development proponents are preparing these detailed studies in order to justify a particular rezoning proposal and convince council that the concept is worthy of support. Over time these studies have become more comprehensive and akin to local environmental studies, albeit prepared by the proponent.

The decision to rezone land and the amount of information required to make this decision is a matter for council. However, it is not appropriate that detailed local environmental study style rezoning applications be expected before council or the Director-General has agreed to proceed with a rezoning.

As such councils should refrain from asking for excessive amounts of detail before a proposal is considered by council and the Director-General. As an example, it is not appropriate to request

detailed threatened species assessments until there is an agreement from council and the Director-General to progress the draft plan.

In order to justify a request to rezone land the right balance of supporting information is needed from the proponent to allow the council and the Director-General, to make a decision. Where proponents wish to provide additional information the following list should be considered as a guideline on the information to be provided:

- a brief description of the locality of the proposal, including its character, the existing and previous land use, the existing zoning of the land and its surrounds
- mapping information and photographs (including aerial where appropriate) to describe the land, its locality and the relationship with adjoining land uses
- a concise but adequate outline of the proposal, including the changes required to the existing zoning or plan
- compelling reasons for the proposed rezoning, including:
 - policy and strategic context in terms of consistency with State policy/council strategy, public interest reasons and existing studies
 - compatibility with the surrounding zoning and land use patterns
 - implications of not proceeding with the proposal
 - where relevant, a supply and demand analysis to demonstrate the need for the proposal
 - justification of the proposal in terms of the relevant LEP Panel pro-forma criteria
- an identification of the key environmental issues of the land as understood at the time, including:
 - soils and geological capability
 - biophysical environment, including natural vegetation and threatened species
 - the water cycle on the land and in the locality
 - natural hazards that may exist on the land
 - cultural environment, including information on Aboriginal or European heritage
 - social or community issues, including housing, employment and economic environments
- information to highlight for discussion any broader issues that may need attention or resolution.

Note: It is not the purpose of a rezoning justification to go into a detailed description of a proposal and its environmental implications. This material needs to be developed as part of the formal local environmental study. As a guide it is expected the above issues could be addressed in a concise document of 6–10 pages.

Who prepares a local environmental study

The key focus and rationale of a local environmental study is to ensure that the information supporting the proposed rezoning is balanced and forms a sound basis for decision-making. While independently prepared studies prepared by the council can achieve this, it is also the Department's experience that this can be achieved through proponent-prepared studies provided they are properly managed and reviewed prior to adoption by council.

Councils can use a number of strategies to appropriately manage or review local environmental studies prepared by proponents, including:

- oversight of consultants work by a council officer or an independent council engaged contractor
- periodic reviews of the supporting and background work of the consultants by a council officer or council employed contractor
- utilisation of peer reviewers (at the expense of the proponent) when the local environmental study is submitted
- review of draft studies by state or federal government agencies.

Managing the transition

It is recognised that circumstances may exist where development and rezoning proponents have already expended considerable resources on the preparation of detailed environmental studies to support potential rezoning applications. It is not the intention of the Government to deter investment in innovative proposals that are consistent with metropolitan, regional or local planning strategies.

In these circumstances it is suggested that the following courses of action may be appropriate:

- proponents should make contact with the council to discuss their proposal and the extent of information that council will require to support a proposal through the initial stages of the plan making process, or
- proponents can reformat their prepared studies to address the issues set out in the section 'Information to Support Rezoning Applications' in this circular.

If a decision is taken to support a rezoning proposal proceeding, it is likely that material already prepared by proponents will provide substantial input to a formal local environmental study or other document required by the council or the Director-General.

Further information

For more information, please contact the relevant Department of Planning local planning team.

Regional NSW

Barwon	02 6764 6831
Central Coast	02 4323 7000
Central West/Far West	02 6884 2560
Hunter	02 4904 2700
Illawarra/South Coast	02 4224 9450
Murray/Murrumbidgee	02 6297 6477
North Coast	02 6640 2160

Sydney East

City/East	02 8374 5915
Inner North/Inner West	02 8374 5913

Sydney North West

North/North East	02 8374 5926
North West	02 8374 5925

Sydney South West

South West	02 9895 7633
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General enquiries

Information Centre 02 9228 6333

Note: This and other Department of Planning circulars are published on the web at www.planning.nsw.gov.au/planningsystem/practicenotes.asp.

Authorised by:

Sam Haddad
Director General

Important note

This circular does not constitute legal advice. Users are advised to seek professional advice and refer to the relevant legislation, as necessary, before taking action in relation to any matters covered by this circular.

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Attachment 1

Local Environmental Plan Process

